



July 5, 2002

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-3644

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the Act"). Your request was assigned ID# 165275.

The Dallas Police Department (the "department") received a request for the complete internal affairs investigation packet on a named police officer. You state that the responsive information consists of two reports, 00-265 and 02-154. You indicate that the department will release basic information. *See generally* Gov't Code § 552.108(c) (providing that basic information regarding arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). You claim that the remaining portions of the reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating why information at issue should or should not be released).

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." We note that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991).

You state that the responsive reports are related to an open and pending criminal investigation being conducted by the Federal Bureau of Investigation ("FBI"). You further state that the FBI has informed the department that the release of these reports would interfere with the detection, investigation, or prosecution of crime. Based on these representations and our review of the submitted information, we agree that you have demonstrated the applicability of section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

The requestor contends, however, that the department has previously released the responsive information to his client, thereby waiving any exceptions to its public disclosure. Specifically, the requestor states that, pursuant to certain rules of the City of Dallas, his client was required to personally examine, sign, and date each page of these reports. Upon review, we note that the former officer's initials do appear on every page of the responsive information. As a general rule, we agree that if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is otherwise confidential by law. *See* Gov't Code § 552.007; *see also* Attorney General Opinion JM-400 (1983); Open Records Decision No. 650 (1996) (once disclosure to public has occurred information in question must be made available to any person). However, based on the requestor's comments, it appears that the submitted documents were not released to his client as a member of the public, but as an employee of the department. *See generally* Attorney General Opinion JM-119 (1983) (discussing distinction between "official capacity" and "member of public" in open records process). Thus, we conclude that the department has not waived its section 552.108(a)(1) claim, and the remaining portions of the reports may be withheld under that exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

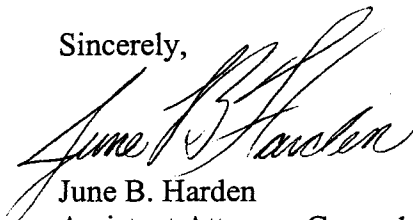
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 165275

Enc: Submitted documents

c: Mr. Robert T. Baskett
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(w/o enclosures)